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★ MAY 16 2017 ★
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID OJO,

Petitioner,

-against-

UNITED STATES;

Respondents.

13-CR-334 (ARR)
17-CV-1652 (ARR)

NOT FOR ELECTRONIC OR PRINT PUBLICATION

OPINION & ORDER

ROSS, United States District Judge:

By pro se petition dated March 22, 2017, David Ojo seeks, pursuant to 28 U.S.C. § 2255, to vacate his conviction by jury on August 8, 2013, of conspiracy to commit wire fraud and conspiracy to commit identification document fraud in violation of 18 U.S.C. § 1349 and 18 U.S.C. § 1028(f). I denied this petition by order dated May 10, 2017. Opinion & Order, ECF No. 93. Due to a docketing error, I did not receive petitioner's reply in support of his motion until today. See Docket Entry associated with ECF No. 94. I have fully reviewed petitioner's reply. Petitioner raises only one argument not addressed in my prior opinion: He alleges for the first time in this reply that any arguments he failed to raise on direct appeal should not be considered procedurally barred because he maintains that he was actually innocent. Letter from Olukayode David Ojo (Apr. 18, 2017) ("Reply"), at 8-9, ECF No. 94. This argument fails for three reasons. First, as it was raised for the first time in his reply, I need not consider it. See Bradley v. Burge, No. 06 Civ. 0040(JGK), 2007 WL 1225550, at *7 (S.D.N.Y. Apr. 19, 2007) (collecting cases). Second, all of the arguments raised in Ojo's habeas petition, and restated in his reply, were raised – and rejected – on direct appeal. See Opinion & Order, at 3-4, ECF No.

93. If these arguments were not procedurally barred, I would reject them for the same reasons the Second Circuit rejected them on direct appeal. See generally Summary Order, at 5, 2d Cir. Dkt. No. 14-635, ECF No. 142. Third, to the extent petitioner raises new arguments for the first time on collateral review, merely asserting innocence does not establish petitioner's entitlement to overcome the procedural bar. Rather, "to demonstrate actual innocence in a so-called collateral proceeding, a petitioner must present 'new reliable evidence that was not presented at trial' and 'show that it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt.'" Lucidore v. N.Y. State Div. of Parole, 209 F.3d 107, 114 (2d Cir. 2000) (alteration in original) (quoting Schlup v. Delo, 513 U.S. 298, 299, 327-28 (1995)). Ojo has not attempted this required showing. Finally, the remainder of petitioner's reply repeats arguments already fully addressed in my prior opinion.

For these reasons, the petition remains dismissed and the case remains closed. A copy of this order has been mailed to petitioner by chambers.

SO ORDERED.

/s/(ARR)

Allyne R. Ross
United States District Judge

Dated: May 15, 2017
Brooklyn, New York